IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO.5 OF 1999
IN
APPEAL FROM ORDER NO.19 OF 1997

Mr. Aleixo Pereira,
married, landowner,
Fatorda, Margao,Goa ... APPLICANT
Ori.Plaintiff No.1

Versus

1. Visitacao Vicentinho Rebello
r/o H.N.909 Acsona
Benaulim,Salcete,Goa;

2. Mrs. Tereza Silva Rebello,
r/o H.No.909 Acsona Benaulim,
Salcete, Goa;

3. Miss Matilde Rebello,
r/o H.No.909 Acsona Benaulim,
Salcete, Goa;

4. Carmelito Rebello,
r/o near V. Panchayat Office,
E 97 Varca,Salcete,Goa;

5. Mrs. Socu Rebello,
r/o near V. Panchayat Office
E 97 Varca,Salcete,Goa;

6. Sebastiao Carvalho,
r/o 1st Fatrade H.N.678,
Varca,Salcete, Goa;

7. Natividade Carvalho,
r/o H.N.678 1st Fatrade,
Varca, Salcete,Goa ... CONTEMNORS/
RESPONDENTS.

Mr. M.B.D'Costa and Mr. J.A. Lobo, Advocates for the Applicant.

Mr. M.S. Sonak and Mr.D. Pangam, Advocates for the Respondents Nos.1 to 5.

CORAM : F.I. REBELLO,J.

DATED : JUNE 19, 2003.

ORAL JUDGMENT

The Appeal from Order No.19 of 1997 was disposed of by this Court by its Order dated November 3, 1997 by recording certain statements. The submissions are recorded at paragraph 5 of the Order and in paragraph 6 is recorded the undertaking made by the Counsel after taking instructions from the Respondents. This Court observed that the parties shall maintain **status quo** in the suit property, subject however, that the Appellants are allowed to re-construct the house on the existing plinth area of 150 square metres without prejudice to any of the rights of the Respondents and under clear understanding that the Appellants shall not be entitled to claim any amount towards the expenses incurred for such reconstruction in case the Respondents succeed in the suit and the suit properties are ultimately ordered to be auctioned in the suit.

2. The Respondents thereafter filed these proceedings contending that the Appellants who are now Respondents, in violation of the undertaking given before this Court had committed breach of the said undertaking by re-constructing the house not on the plinth but have exceeded the plinth area.

Affidavit-in-reply has been filed on behalf of the Respondents. It is set out therein that an Architect without knowing that their construction was to be maintained within the old plinth, had prepared the plans and in fact, the plan was shown to the Court. However, this aspect before the Court is denied by the Applicants herein. However, in Paragraph 14 they have also tendered unconditional apology for constructing beyond the existing plinth while re-constructing the house. There are, also, additional Affidavits. One such Affidavit is dated 1st February 2002. In that it is set out that Special Civil Suit No.135/85/B had been dismissed by the trial Court by Judgment and decree dated 10-10-2000. That no appeal had been filed as till the filing of the Affidavit the Appellants had not been served with any notice of so filing. The matter was on the Board last week. It was adjourned to enable the Counsel for the Applicants to find out whether any appeal has been preferred. Counsel for the Appellants points out that he has been unable to contact Advocate to find out whether any appeal has been preferred as that Advocate has since expired. On behalf of the Respondents, the learned Counsel states that as per their knowledge till date at least they have not received any notice of any Appeal being filed.

3. To my mind there has been a breach of the undertaking as admitted by the Respondents themselves in the Affidavit. However, considering the fact that the plans were not prepared by them but by their Architect and the house has already been completed and the subsequent event, namely, that the suit itself has been disposed of, this would be a fit case to accept the unconditional apology tendered by the Respondents and dispose of the Contempt Petition.

In the light of that, the unconditional apology tendered by the Respondents is accepted. Contempt Petition is disposed of accordingly.

F.I. REBELLO,J.

ac.